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POLICE—EXPUNGEMENT OF CRIMINAL RECORDS DEFINITION  
—PROCEDURE.

August 11, 1972.

*Commissioner Donald D. Pomerleau,  
Baltimore City Police Department.*

You have asked for our opinion as to the meaning of the word "expunge" as used in subsection (a) of House Bill 344, which became Article 27, § 292 of the Annotated Code of Maryland (1971 Repl. Vol.), on July 1, 1972. Specifically you ask "... does 'expunge' demand the destruction of all records of arrest or does it demand simply the non-publication or pronouncement of such records of arrest to any public or private agency."

In considering the expungement requirements of § 292 (a), we will look to § 292 (b) which first provided for the expungement of public criminal records under the controlled dangerous substances laws of Maryland since it existed as § 292 prior to the 1972 amendment contained in House Bill 344.

§ 292 (b) reads as follows:

"(b) Whenever any person who has not previously been convicted of any offense under this subheading or under any prior law of this State or the laws of the United States or of any other state relating to controlled dangerous substances defined in this subheading, pleads guilty to or is found guilty of any of the offenses specified in this subheading, the court, if satisfied that the best interests of the person and the welfare of the people of this State would be served thereby may, with the consent of such person stay the entering of the judgment of guilt, defer further proceedings, and place such person on probation subject to such reasonable terms and conditions as may be appropriate and may in addition require that such person undergo inpatient or outpatient treatment for

drug abuse. Upon violation of a term or condition, the court may enter a judgment or conviction and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without a judgment of conviction and shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by the law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions under section 293 of this subheading. Discharge and dismissal under this section may occur only once with respect to any person and *in addition any public criminal record in any such case shall be expunged upon the satisfactory completion of any such period of probation.* Any expunged arrest and/or conviction shall not thereafter be regarded as an arrest or conviction for purposes of employment, civil rights, or any statute or regulation or license or questionnaire or any other public or private purpose, *provided that any such conviction shall continue to constitute an offense for purposes of this subheading or any other criminal statute under which the existence of a prior conviction is relevant.*" (emphasis added)

Public records are defined in § 1 (a) of Code Article 76A to include any records made or received in connection with the transaction of public business except such records as may be privileged or confidential by law. § 3 (b) of that Article mentions records of investigations conducted by a police department as being records to which the custodian may deny the right of inspection. As there are no statutory provisions declaring any police records "privileged or confidential by law," such records must be considered "public records" in light of Code Article 76A. Therefore, the duty to expunge would include expungement of all police records relating to the offense including criminal records and criminal history file materials.

It is long settled in Maryland that the understanding and intention of legislators determine the meaning of their enactments. *Mayor and City Council v. Perrin*, 178 Md. 101; 12 A. 2d 261 (1940). In attempting to construe the meaning of legislation, a statute should be considered as a whole or in its entirety, and the legislative intention gathered from the entire statute. *State Department of Assessments and Taxation v. Ellicott-Brandt, Inc.*, 237 Md. 328 (1965). It is apparent that in the subsection under consideration, only first offenders are to be given preferential treatment concerning their "public criminal records." Specifically, the "expunged" conviction, i.e. the finding of guilt, continues to be regarded as an offense for any criminal statute wherein a prior conviction is relevant. Obviously, if all records are destroyed, it would be impossible to later determine if an individual had a prior conviction or should be treated as a first offender. We feel that clearly the legislature intended to prohibit the dissemination of information concerning the arrest of persons placed on probation under subsection (b), except for purposes of determining, upon a subsequent arrest, whether or not the person has a record of conviction. Accordingly, we conclude that under subsection (b), expunged records need not be physically destroyed, but should be so segregated as to prevent public or private access for any reason other than as indicated herein.

We would also point out that the Federal Controlled Dangerous Substances Act, Title 21, § 844, United States Code Annotated, which provides for the expungement of criminal records upon completion of probation is very similar to § 292(b). To comply with the expungement requirement, the Federal Judicial Conference determined that federal district courts should follow a procedure whereby such records are sealed, but not destroyed for ten (10) years.

§ 292(a) reads as follows:

"(a) Whenever any person who has not previously been convicted of any offense under this subheading or under any other prior law of this State

of the laws of the United States or of any other State relating to controlled dangerous substances as defined in this subheading, and who is tried for any offense specified in this subheading and is found not guilty, or where the charges against such person are dismissed in any manner, by either the court or the prosecuting authority, the court, if satisfied that the best interest of the person and the welfare of the people of this State would be served thereby, shall expunge the criminal record resulting from the arrest in such case. No expunged criminal arrest record shall thereafter be regarded as an arrest for purposes of employment, civil rights, or any statute or regulation or license or questionnaire or any other public or private purpose."

As § 292(a) was enacted subsequent to § 292(b), concerns the same subject matter, and adopted much of its language, it seems clear the legislature intended the expungement of criminal records in § 292(a) to be the same expungement as in § 292(b). As § 292(b) requires the segregation of expunged records to prevent public or private access as opposed to physical destruction, we conclude that those criminal records which the court orders expunged pursuant to § 292(a) should also be segregated and public and private access be denied.

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